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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE:

Rosemary M. Vigadi,

Debtor,

Chase Bank USA, N.A.,

Plaintiff,

v.

Rosemary M. Vigadi,

Defendant.

Chapter 7

Case No. 09-24133

Adversary No.

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF
DEBT: U.S.C. § 523(a)(2)(A) and (C)

NOTICE: this is a Complaint alleging that the Defendant has committed fraud against the Plaintiff in connection with the use of a credit account. The Defendant is strongly urged to review it with an attorney. The Defendant may qualify for free or low cost legal assistance. Please contact the State Bar Association for information.

Plaintiff alleges:

I. PARTIES AND JURISDICTION

1. This adversary proceeding is brought under U.S.C. §523(a)(2)(A) and (C).

1- COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT



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2. Plaintiff, a foreign corporation licensed to do business in the State of Illinois with all licenses paid, and otherwise is entitled to bring this action, is a creditor in this case.

3. Defendant filed a Chapter 7 bankruptcy petition on 07/01/2009.

4. The Court has jurisdiction under 28 U.S.C. §§157 and 1334, and 11 U.S.C. §523.

5. This is a core proceeding.

II. CAUSE OF ACTION

6. Defendant entered into a written contract with Plaintiff for an open end consumer credit card plan under Account No. XXXXXXXXXXXXXXXXXXXX0505 ("Account").

7. As of the petition date, Defendant owed \$3,808.12 on the Account.

8. Between 03/20/2009 and 06/15/2009, the Defendant incurred \$3,811.00 in retail charges on the Account (Charges). Of the Account balance, \$2,886.00 of Charges were incurred within 70/90 days of the bankruptcy filing for luxury goods and/or services and/or cash advances for consumer credit. These charges are presumed to be nondischargeable. [See Transaction History, attached as Exhibit A.]

9. The totality of the circumstances when the Charges were incurred shows that Defendant did not intend to repay the Charges:

9.1 the Charges were incurred near the date of the bankruptcy filing;

9.2 the Defendant was in poor financial condition;

9.3 the response to Statement of Financial Affairs, Questions 1 and 2, indicates an average yearly income of about \$122,150.00 per year in the two years prior to the bankruptcy filing;

9.4 the amount charged is high;

9.5 there are several charges in a short period of time;

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9.6 multiple Charges were incurred on the same day;

9.7 charges may have been made for luxury goods and/or services;

9.8 based on the monthly income, monthly living expenses, and circumstances disclosed in the Schedules and Statement of Financial Affairs, no disposable income was available to pay the minimum monthly requirement on unsecured debt;

9.9 the minimum monthly payment on the \$26,400.00 of scheduled unsecured credit card debt (based on a required minimum monthly payment on each account of 3%) exceeded \$792.00 per month before the petition was filed;

9.10 the Statement of Financial Affairs indicates that no losses from fire, theft, or gambling were incurred for the one year before the petition was filed.

9.11 Defendant is relatively sophisticated in business matters;

9.12 other unsecured credit was also utilized;

9.13 there were not sufficient liquid assets that could have been used to service unsecured debt;

10. Charges were incurred when Defendant could not pay existing financial obligations as they became due.

11. By incurring the Charges on the Account, Defendant represented an intention to repay them.

12. Defendant obtained money from the Plaintiff through fraud and false pretenses, false representations and/or actual fraud.

13. Defendant had a specific intent to defraud Plaintiff by accepting the benefits of the charges without intending to repay them.

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14. Defendant's actions constitute material misrepresentations of the facts.

15. Defendant intended for Plaintiff to rely on those misrepresentations.

16. Plaintiff justifiably relied on Defendant's misrepresentations which induced it to lend money to Defendant.

17. The Charges were incurred for consumer debt.

18. Defendant's conduct has damaged Plaintiff in the amount of \$3,811.00.

19. Defendant should be denied a discharge of Plaintiff's claim in the amount of \$3,811.00.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

1. A monetary judgment in the amount of \$3,811.00, including accrued interest to the petition filing date, plus contract rate interest to date of judgment, to continue to accrue post-judgment;
2. An Order of nondischargeability under 11 U.S.C. § 523 (a)(2)(A), and (C);
3. An award of reasonable attorney fees and costs; and
4. Additional relief as may be just and equitable.

DATED: September 30, 20 09

WEINSTEIN & RILEY, P.S.

By Richard S. Ralston

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Attorneys for Plaintiff

4- COMPLAINT TO DETERMINE
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ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER
PLAINTIFFS Chase Bank USA, N.A.	DEFENDANTS ROSEMARY M. VIGADI	
ATTORNEYS (Firm Name, Address, and Telephone No.) Richard S. Ralston Weinstein & Riley, P.S. 2001 Western Avenue, Suite 400 Seattle, WA 98121 206-269-3490	ATTORNEYS (If Known) PETER L BERK ATTORNEY AT LAW 79 WEST MONROE, SUITE 900 CHICAGO, IL 60603 3127592838	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other	PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Claim for Nondischargeability of Debt pursuant to § 523(a)(2)		
NATURE OF SUIT (Number up to five (5) boxes starting with the lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11- Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12- Recovery of money/property - §547 preference <input type="checkbox"/> 13- Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14- Recovery of money/property – other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21- Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31- Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41- Objection / Revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51- Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a),(1),(14),(14A) priority tax claims <input checked="" type="checkbox"/> 62-Dischargeability - §523(a)(2) false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61- Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68- Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63- Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64- Dischargeability - §523(a)(15), divorce/sep property settlement/decreed <input type="checkbox"/> 65- Dischargeability – other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71- Injunctive relief – reinstatement of stay <input type="checkbox"/> 72- Injunctive relief – other FRBP 7001(8) – Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) – Declaratory Judgement <input type="checkbox"/> 91- Declaratory Judgement FRBP 7001(10) – Determination of Removed Action <input type="checkbox"/> 01- Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78AAA <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law.	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$3,811.00	
Other Relief Sought		



BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR ROSEMARY M. VIGADI		BANKRUPTCY CASE NO. 09-24133	
DISTRICT IN WHICH CASE IS PENDING NORTHERN	DIVISIONAL OFFICE CHICAGO	NAME OF JUDGE JOHN H. SQUIRES	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF)			
DATE September 24, 2009		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Richard S. Ralston	

INSTRUCTIONS

The filing of the bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on our court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Parties. Give the name of the parties to the adversary proceeding exactly as they appear on the complaint. Give the names and addresses of the attorneys if known.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.



Account Holder Information					
Account Holder 1			Account Holder 2		
Name:	ROSEMARY VIGADI		Name:		
Address:	638 GRENACHE CT		Address:		
City/State/Zip	BARTLETT, IL 60103-4704		City/State/Zip		
SSN:	-5193		SSN:		

Statement Facsimile					
Account Number			-0505		
Statement Date: 7/4/2009		Current Balance: \$3,898.12		Credit Limit: \$11,000.00	
Posting Date	Reference	Transaction Date	Description	CR	Amount
07/03/2009		07/03/2009	PURCHASE *FINANCE CHARGE*	D	
06/29/2009		06/29/2009	LATE FEE	D	
06/16/2009	24323009166254090010	06/15/2009	M-ROCK CAMERA BAGS CRP	D	\$145.20
	046		30593		
06/08/2009	24427339158710006454	06/06/2009	DENNY'S #7431 ARLIN	D	\$62.26
	483				
06/07/2009	74435659157401060595	06/05/2009	GNC #7024 BARTL	C	(\$73.25)
	232				
06/07/2009	24435659157401060595	06/05/2009	GNC #7024 BARTL	D	\$232.97
	245				
06/07/2009	24761979157274039010	06/05/2009	ITALIAN VILLAGE RESTAU	D	\$52.54
	455		CHICA		
06/07/2009	24418009157157054240	06/05/2009	55 E MONROE 0392 CHICA	D	\$19.00
	201				
06/04/2009		06/04/2009	PURCHASE *FINANCE CHARGE*	D	
05/31/2009	24610439149004017381	05/29/2009	EVENT TICKET INSURANCE 866	D	\$12.00
	639		-4		
05/31/2009	74226389149370687679	05/28/2009	SAMS INTERNET 888-7	C	
	851				
05/28/2009	24692169147000258872	05/27/2009	TM *JERSEY BOYS 312-5	D	\$300.00
	365				
05/26/2009	24301379145118000171	05/24/2009	WILDFIRE OAKBROOK OAK	D	\$92.12
	108				
05/25/2009	24071059144987171039	05/22/2009	PATIO PONDS, INC. WEST	D	\$42.90
	592				
05/24/2009	24492799142409001086	05/22/2009	JEWEL-OSCO 3246 CAROL	D	\$105.49
	648				
05/24/2009	24164079142217016892	05/21/2009	Dominicks Stor00016972 BARTL	D	\$27.50
	031				
05/22/2009	24164079141091012260	05/21/2009	TARGET 00008409 NAPER	D	\$17.70
	183				
05/19/2009	24088029138138362610	05/17/2009	BISTRO 59 GLEND	D	\$62.13
	609				
05/04/2009		05/04/2009	PURCHASE *FINANCE CHARGE*	D	
04/27/2009	24224439117020009447	04/26/2009	POTBELLY 075 BLOOM	D	\$9.48
	366				
04/27/2009	24224439117020009447	04/26/2009	POTBELLY 075 BLOOM	D	\$4.08
	374				

04/21/2009	24164079110691041203	04/19/2009	KWIK TRIP 35200003525	CHIPP	D	\$21.01
	000					
04/21/2009	24013399110005953365	04/19/2009	THE SAWMILL SALOON		D	\$70.25
	035		HAYWA			
04/20/2009	24226389109370118841	04/14/2009	SAMS INTERNET	888-7	D	\$256.85
	693					
04/19/2009	24717059108161086587	04/17/2009	THE WAYSIDE INN	HAYWA	D	\$96.22
	053					
04/19/2009	24266969107980011795	04/17/2009	HOOKSTONE WINERY		D	\$30.60
	192		HAYWA			
04/19/2009	24717059107161075844	04/17/2009	HAYWARD MERCANTILE		D	\$137.03
	169		COMPANHAYWA			
04/17/2009	24425139107510739011	04/16/2009	TEXAS ROADHOUSE #2271		D	\$32.35
	487		EAU C			
04/16/2009	24692169105000611328	04/15/2009	RPP*LEISURELIVING	800-3	D	\$304.80
	477					
04/14/2009	11041035000000548061	04/13/2009	Payment - Thank You		C	(\$50.00)
	344					
04/12/2009	24246519101508201165	04/10/2009	TOYS R US #6020	BLOOM	D	\$110.85
	704					
04/10/2009	24323009099253233010	04/08/2009	ROBERTO'S RISTORANTE &		D	\$87.09
	691		ELMHU			
04/10/2009	24761979099274098010	04/08/2009	EXTRA VALUE LIQUORS		D	\$56.82
	314		NAPER			
04/10/2009	24153389099207000124	04/08/2009	BROOKDALE MUSIC	NAPER	D	\$36.41
	169					
04/10/2009	24071059099987116814	04/08/2009	DOLLAR WORKS	BARTL	D	\$10.90
	310					
04/10/2009	24223699099980023880	04/08/2009	ONCE UPON A CHILD	STREA	D	\$7.70
	995					
04/10/2009	24164079099868039290	04/08/2009	DOLRTREE 641 00006411		D	\$7.70
	000		STREA			
04/09/2009	24224439099010029571	04/08/2009	SPEEDWAY 07146 2 S		D	\$27.24
	339		WARRE			
04/09/2009	24692169098000693355	04/08/2009	VCI*VITACOST.COM	800-7	D	\$264.79
	413					
04/08/2009	24492799097409001126	04/07/2009	JEWEL-OSCO #3348	BARTL	D	\$88.69
	969					
04/06/2009	24445009096710101316	04/05/2009	KOHL'S #0065	BLOOM	D	\$106.53
	555					
04/06/2009	24493989096207699600	04/05/2009	HALF PRICE BOOKS #090		D	\$40.86
	247		BLOOM			
04/06/2009	24164079095931351639	04/04/2009	AMC SOUTH BARR06004717		D	\$15.75
	511		South			
04/06/2009	24164079095931351641	04/04/2009	AMC SOUTH BARR06004717		D	\$30.00
	913		South			
04/06/2009	24761979095074651019	04/04/2009	PORTILLO'S #15	Q93 STREA	D	\$11.37
	098					
04/06/2009	24610439095004055079	04/03/2009	DRESS BARN #0459	BLOOM	D	\$113.63
	123					
04/05/2009	24164079093091009371	04/03/2009	TARGET	00008409 NAPER	D	\$13.40
	140					

04/05/2009	24246519094508200275 628	04/03/2009	TOYS R US #6020	BLOOM	D	\$56.23
04/05/2009	24224439094040004481 050	04/03/2009	THE WELLINGTON RES	ARLIN	D	\$92.59
04/05/2009	24445009094707910601 336	04/03/2009	TJMAXX #0481	BLOOM	D	\$48.47
04/05/2009	24164079093091008634 332	04/03/2009	TARGET 00008367	GLEND	D	\$16.98
04/05/2009	24610439093072004893 292	04/03/2009	DUNKIN #344892	Q35 NAPER	D	\$11.78
04/03/2009	24224439093030022319 052	04/02/2009	CHIPOTLE 0624	AUROR	D	\$6.99
04/03/2009	24129429092100004786 087	04/02/2009	SAMS OF ARLINGTON, INC ARLIN		D	\$33.20
04/01/2009	24254779090275388385 859	03/30/2009	Q CLEANERS	BARTL	D	\$6.50
03/31/2009	24316059089548275023 932	03/29/2009	SHELL OIL 27442396902 HOFFM		D	\$25.00
03/31/2009	24610439089004088354 350	03/29/2009	PAPPADEAUX SEAFOOD KTCHN ARLIN		D	\$165.69
03/31/2009	24316059089548278022 691	03/29/2009	SHELL OIL 27442396506 HOFFM		D	\$50.00
03/30/2009	24445009089701261816 046	03/29/2009	WALGREENS #3433	HOFFM	D	\$9.05
03/30/2009	24717059088640882832 981	03/28/2009	ARROWHEAD AMERICAN GRILL WHEAT		D	\$63.21
03/30/2009	24717059088640882832 700	03/28/2009	ARROWHEAD AMERICAN GRILL WHEAT		D	\$32.00
03/30/2009	24399009088211516290 010	03/28/2009	PIER 1 00015164	STREA	D	\$61.05
03/24/2009	24164079082091012392 888	03/23/2009	TARGET 00008409	NAPER	D	\$11.15
03/23/2009	24316059081548281024 369	03/21/2009	SHELL OIL 27442396308	STREA	D	\$23.83
03/22/2009	24445009080690808383 165	03/20/2009	BLUE RIBBON	BARTL	D	\$102.83

Credit Card State:.....

-0505

File Date:

07/01/2009